NYSCEF DOC. NO. 1

INDEX NO. UNASSIGNED

RECEIVED NYSCEF: 02/24/2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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SASSON PLASTIC SURGERY, LLC

Plaintiff,

-against-

UNITEDHEALTHCARE OF NEW YORK, INC.,

Defendant.

---x

Index No. 601647/2017

**SUMMONS**

Venue is in Nassau County as it is the place of plaintiff's residence

**TO THE ABOVE-NAMED DEFENDANT:**

UNITEDHEALTHCARE OF NEW YORK, INC.
CT CORPORATION SYSTEM
111 8TH AVE
NEW YORK, NEW YORK, 10011

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default.

DATED: New York, New York
February 24, 2017

TIBBETTS KEATING & BUTLER, LLC

By: [signature]

Meredith F. McBride, Esq.
*Attorney for Plaintiff*
Nine East 45th St, 9th FL
New York, NY 10017
212.629.4119

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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SASSON PLASTIC SURGERY, LLC

Index No. 601647/2017

Plaintiff,

-against-

**COMPLAINT**

UNITEDHEALTHCARE OF NEW YORK, INC.,

Defendant.

-------------------------------------------------------------x

Plaintiff Sasson Plastic Surgery, LLC ("Sasson" or "Plaintiff") by and through its attorneys Tibbetts, Keating & Butler, LLC as and for its complaint alleges as follows:

1. Plaintiff is a New York corporation consisting of Dr. Homayoun N. Sasson ("Dr. Sasson"), a hand and plastic and reconstructive surgery physician duly licensed to practice medicine in the state of New York who maintains his primary practice in the county of Nassau, New York.

2. Upon information and belief, UnitedHealthcare of New York, Inc. ("United" or "Defendant") is an insurance corporation duly authorized to do business in the state of New York.

3. Dr. Sasson maintains a private practice, Sasson, and also serves as a non-staff "on-call" plastic surgeon for area hospitals, including North Shore University Hospital, Long Island Jewish Medical Center, Forest Hills Hospital, Franklin Hospital, Glen Cove Hospital, Huntington Hospital, Plainview Hospital, Syosset Hospital, Mercy Medical Center, St. Francis Hospital, St. Joseph Hospital, Winthrop University Hospital, and New York-Presbyterian Queens.

4. As a non-staff "on call" plastic surgeon. Dr. Sasson receives and accepts service call requests at all hours of the day or night from attending emergency room physicians who determine patients in the emergency department require emergency plastic surgery health care services.

5. Between the time periods of August 1, 2012 through April 2, 2016 Plaintiff rendered such emergency health care services to individuals covered under policies of insurance issued by United.

**AS AND FOR A FIRST CAUSE OF ACTION**
**[Breach of Contract]**

6. Plaintiff incorporates and re-alleges paragraphs 1 through 5 as if fully set out herein.

7. Defendant acknowledged and agreed that Plaintiff should be compensated by Defendant as a non-participating provider for the emergency health care services provided by Plaintiff to Defendant's insureds.

8. The reasonable and customary charges for the services that were rendered to the insureds of Defendant is in an amount no less than $3,886,846.05of which only $1,732,629.65 has been paid by Defendant.

9. Thereafter, Defendant alleged overpayments on some of the claims and unilaterally and inappropriately initiated takebacks in the amount of no less than $18,710.25.

10. As a result, Defendant owes Plaintiff an amount no less than $2,172,926.65 ("Balance Due").

11. Plaintiff and Defendant's insureds have fully performed their obligations

and conditions precedent under the aforesaid agreement.

12. Plaintiff has made demand upon the Defendant for payment of the Balance Due.

13. Defendant's refusal to make payment on the Balance Due is in contravention and in breach of its agreement with Plaintiff.

14. As a result of the aforesaid breach of the agreement. Plaintiff has been damaged in an amount no less than $2,172,926.65.

**AS AND FOR A SECOND CAUSE OF ACTION**
**[Unjust Enrichment]**

15. Plaintiff incorporates and re-alleges paragraphs 1 through 5 as if fully set out herein.

16. Plaintiff provided emergency medical services to patients insured by Defendant in good faith without entering a written contractual relationship with Defendant.

17. Defendant had knowledge that Plaintiff treated its insureds and conferred benefits upon Defendant.

18. Defendant accepted the benefits conferred.

19. The reasonable and customary charges for the services that were rendered to insureds of Defendant is in an amount no less than $3,886,846.05 of which only $1,732,629.65 has been paid by Defendant.

20. Thereafter, Defendant alleged overpayments on some of the claims and unilaterally and inappropriately initiated takebacks in the amount of no less than $18,710.25.

21. As a result, Defendant owes Plaintiff an amount no less than $2,172,926.65 ("Balance Due").

22. Plaintiff has made demand upon Defendant for payment of the Balance Due and with the expectation that said amount would be paid.

23. As a consequence thereof, Defendant has been unjustly enriched by the retention of the Balance Due.

24. Plaintiff has been damaged in an amount no less than $2,172,926.65.

**AS AND FOR A THIRD CAUSE OF ACTION**
**[Quantum Meruit]**

25. Plaintiff incorporates and re-alleges paragraphs 1 through 5 as if fully set out herein.

26. Plaintiff provided medical services to patients insured by Defendant or Defendant's health plans in good faith without entering a written contractual relationship with Defendant.

27. Defendant had knowledge that Plaintiff treated its insureds and conferred benefits upon the Defendant.

28. Defendant accepted the benefits conferred.

29. The reasonable and customary charges for the services that were rendered to the insureds of Defendant is in an amount no less than $3,886,846.05 of which only $1,732,629.65 has been paid by Defendant.

30. Thereafter, Defendant alleged overpayments on some of the claims and unilaterally and inappropriately initiated takebacks in the amount of no less than $18,710.25.

31. As a result, Defendant owes Plaintiff an amount no less than $2,172,926.65.

32. Plaintiff is entitled to receive compensation for its work and labor in accordance with New York law.

33. Defendant wrongfully withheld compensation for the work and labor performed despite the proper submission of claims by Plaintiff.

34. The circumstances are such that it is inequitable for Defendant to retain the benefits without paying the fair rate for such services.

35. The Plaintiff has been damaged in an amount no less than $2,172,926.65.

**AS AND FOR A FOURTH CAUSE OF ACTION**
**[Third Party Beneficiary-Breach of Contract Claim]**

36. Plaintiff incorporates and re-alleges paragraphs 1 through 5 as if fully set out herein.

37. Upon information and belief, at all relevant time periods herein, Defendant issued health care insurance policy contracts to insureds pertaining to health care services (hereinafter the "Policy").

38. Upon information and belief, the Policy provided for the reimbursement of medical care services rendered by providers, such as Plaintiff, who are commonly referred to as non-participating providers, who did not have agreements with Defendant.

39. At all times relevant herein Plaintiff was the intended beneficiary of the Policy, which was issued by Defendant.

40. Defendant had knowledge that Plaintiff treated its insureds and conferred benefits upon the Defendant.

41. Defendant accepted the benefits conferred.

42. The reasonable and customary charges for the services that were rendered to the insureds of Defendant is in an amount no less than $3,886,846.05 of which only $1,732,629.65 has been paid by Defendant.

43. Thereafter, Defendant alleged overpayments on some of the claims and unilaterally and inappropriately initiated takebacks in the amount of no less than $18,710.25.

44. As a result, Defendant owes Plaintiff an amount no less than $2,172,926.65.

45. Plaintiff has made demand upon Defendant to cease the takebacks and for payment of the Balance Due with the expectation that said amount would be paid.

46. Plaintiff has been damaged in an amount no less than $2,172,926.65.

**AS AND FOR A FIFTH CAUSE OF ACTION**
**[Account Stated]**

47. Plaintiff incorporates and re-alleges paragraphs 1 through 5 as if fully set out herein.

48. During the relevant time period, Plaintiff provided emergency medical services to patients insured by Defendant or Defendant's health plans, in good faith without entering a written contractual relationship with Defendant.

49. Within a reasonable time of providing such medical services, Plaintiff sent requests to Defendant for payment to for the medical services provided in an amount no less than $3,886,846.05.

50. Defendant paid only $1,732,629.65 of the $3,886,846.05 to Plaintiff

without providing adequate written notice of any objection as to the remaining balance.

51. As a result, an account was stated between Plaintiff and Defendant which showed a balance of no less than $2,154,216.40 due and owing by Defendant to Plaintiff.

52. Plaintiff has been damaged in an amount no less than $2,154,216.40.

**AS AND FOR THE SIXTH CAUSE OF ACTION**
**[Conversion]**

53. Plaintiff re-alleges the allegations in paragraphs 1 through 5.

54. Defendant's members pay Defendant premiums for the purpose of covering their medical services, including emergency medical services.

55. Despite Defendant's insureds incurring charges for emergency medical services provided by the Plaintiff in an amount no less than $3,886,846.05, Defendant only paid $1,732,629.65 of the $3,886,846.05 and took back an additional $18,710.25 from the payments made, leaving a balance due to Plaintiff of $2,172,926.65.

56. Defendant has converted the funds in its possession, which are intended for the payment of medical service for the Defendant's members, to its own use.

57. Plaintiff has been damaged by the conversion by the Defendant of the funds intended for the payment of medical services for the Defendant's members.

**AS AND FOR A SEVENTH CAUSE OF ACTION**
**[Defamation]**

58. Plaintiff incorporates and re-alleges paragraphs 1 through 5 as if fully set forth herein.

59. In response to claims for the emergency medical services rendered by Dr. Sasson, United issued Explanation of Benefits forms ("EOBs") to patients. Within many

of the EOBs, United alleged Dr. Sassson replaced the attending emergency room physicians' names with his name on hospital admissions sheets or committed other fraud.

60. Additionally, in telephone calls with its insureds/Dr. Sasson's patients, United made claims that Dr. Sasson made misrepresentations and committed fraud on his invoices.

61. Dr. Sasson did not replace attending room physicians' names with his name on hospital admission sheets nor did he commit fraud or make misrepresentations on invoices to United.

62. These false allegations by United harm Dr. Sasson, his reputation, and his relationship with his patients, some of which have failed to come in for necessary follow-up medical appointments due to United's false claims.

63. As a result of United defamatory claims against Dr. Sasson, Plaintiff has been damaged in an amount no less than the jurisdictional limit.

WHEREFORE the Plaintiff respectfully requests judgment against the Defendant as follows:

a. On Plaintiff's first case of action, in an amount to be determined at trial, but which is not less than $2,172,926.65;

b. On Plaintiff's second cause of action, in an amount to be determined at trial, but which is not less than $2,172,926.65;

c. On Plaintiff's third cause of action, in an amount to be determined at trial, but which is not less than $2,172,926.65;

d. On Plaintiff's fourth cause of action, in an amount to be determined at trial, but which is not less than $2,172,926.65;

e. On Plaintiff's fifth cause of action, in an amount to be determined at trial, but which is not less than $2,154,216.40;

f. On Plaintiff's sixth cause of action, in an amount to be determined at trial, but which is not less than the jurisdictional limit;

g. On Plaintiff's seventh cause of action, in an amount to be determined at trial, but which is not less than the jurisdictional limit;

h. Attorney's fees;

i. Punitive damages;

j. The cost and disbursements of this action; and

k. Such further and other relief as the court may deem to be just and proper.

Dated: New York, New York
February 24, 2017

TIBBETTS, KEATING & BUTLER, LLC

Meredith F. McBride
*Attorney for Plaintiff*
Nine East 45th Street 9th Floor
New York, New York 10017
(212) 629-4119